



THE CO-OPERATIVE FEDERATION OF VICTORIA

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TO: The Registrar, Cooperative Societies
FROM: The Cooperative Federation of Victoria
SUBJECT: Draft Proposals for Re-enactment of the Co-operation Act

1. At the outset, this Federation submits that the word "society", wherever it appears in the draft, should be removed and be replaced with the word "Cooperative" to clarify the distinctive nature of the Cooperative structure.

2. SECTION 6(2)

REQUEST:

Amend to read

A society so formed shall be deemed to be a cooperative society which subscribes to the principles of

Open membership
Democratic control
Equitable distribution of surplus
Limited interest paid on Share Capital

as enacted in Sections 52(2), 111(3) and 60(5) of this Act.
Such a society shall have all the privileges, powers, rights and duties by law conferred or imposed on cooperative societies.

REASON:

At no place in the Act is there a definition of the adjective "Cooperative" qualifying "society". Section 54(b) restricts the use of the word "Cooperative". If the proposal at (1) above is accepted then it will still be necessary to define the noun "Cooperative".

The principles listed are the internationally recognised basic principles of Co-operation. Although the Act does provide they should be observed a clear setting out in a definitive clause would create a greater awareness of their existence and the meaning of what a cooperative structure entails.

3. SECTION 11

REQUEST:

Remove the newly introduced limitation to "rural areas" wherever it applies.

REASON:

The Cooperative Federation considers that social developments and

the recent Government Green Paper on Housing could lead to groups wishing to form Community Settlement Cooperatives in urban areas as well as rural areas. The discrimination is considered unnecessary.

4. SECTION 49 (3)(c)

One proposed object of the Federation to be incorporated under the new Act is that of providing centralised banking and investment services for its members.

QUERY:

Do the powers set out at 49(b) provide sufficient authority for this service to be undertaken? If not, can enabling provision be made?

5. SECTION 53(1)

REQUEST:

Amend to read

"A society may be formed by any seven or more persons or, in the case of a credit society, any fifty or more persons or, in the case of producers society at the discretion of the Registrar any three or more persons who are eligible under this Act and the rules as later approved and registered to be members of the Society."

REASON:

Farmers wishing to pool resources to operate a Cooperative farming enterprise are unlikely to operate with seven or more farmers. The need for rationalisation in the farming industry is well recognised. The Co-operation Act should assist such programmes not act as an obstacle.

6. SECTION 54(6) restricts the use of the word "cooperative"

REQUEST:

Penalty for improper use be imposed.

REASON:

A penalty is provided at 54(5) for improper use of words "credit society". Consistency requires similar treatment as a normal corollary to a prohibited act.

7. SECTION 56(1)

REQUEST:

Amend to read

"Any two or more societies of the same kind or, where the Minister so approves, any two or more societies of different kinds may, by special resolution of both or all the societies, apply to be registered as an amalgamated society, with or without any winding up or any division of the funds of the societies or any of them."

REASON:

The restriction of amalgamations to societies of one kind is considered too restrictive. The practice of some other Australian States should be followed in Victoria.

Every incentive should be given for the rationalisation of societies to enable amalgamations to take effect before total demise of one or other party. The section should ensure substantial continuity of beneficial ownership in the shares of the parties to an amalgamation to enable tax loss situations to be utilised for the benefit of the resultant amalgamated society.

8. SECTION 59(3)

REQUEST:

Amend to read

"Unless otherwise authorised by the Registrar, the shares shall be all of one class, ranking equally but in the case of an association or federation may be of different classes, ranking equally."

REASON:

There are situations where once active members retire from their business activities but wish to retain their membership and retain their capital in the Cooperative. Such members would be entitled to a different rate of interest (dividend) on their shares to those active members who are paid a dividend and a patronage rebate.

9. SECTION 59(4)

REQUEST:

Delete this sub-section.

REASON:

Whilst Cooperative capital is service capital and not investment capital in these days of continuing inflationary trends Cooperatives, like other corporate entities, should be permitted to pass on the increasing value of their assets to their members whose capital has produced the asset.

New members should not expect to acquire equity in a Cooperative at the same price today as even five or ten years ago.

Silence on this matter in the legislation would, it is considered, not preclude Cooperatives issuing shares at a premium. The operation would be subject to inspection by the Registry.

10. SECTION 59(6)

REQUEST:

Delete this sub-section.

REASON:

As set out in item 20 - relating to request for removal of Sections 85-96.

11. SECTION 59A.

REQUEST:

Insert new section and/or re-number all subsequent sections to include the following

(1) Where -

(a) the assets of a society (other than a building society or a rural credit society), being assets not acquired for resale at a profit, have been -

(i) sold at a profit; or

(ii) revalued at a greater value than that disclosed prior to the revaluation in the books of the society; and

(b) the society is authorised by its rules to issue bonus shares to its members in the circumstances referred to in paragraph (a),

the society may make an application to the Advisory Council for its consent to the issue of bonus shares in respect of the sale or revaluation, as the case may be.

(2) An application under subsection (1) shall specify the terms on which the bonus shares are to be issued and shall be accompanied by -

(a) a statement of the value of the assets concerned as disclosed in the books of the society before the sale or revaluation, as the case may be;

- (b) where the application arises from, or partly from, a sale of assets, a statement of the price for which the assets were sold;
 - (c) where application arises from, or partly from, a revaluation of assets, a certificate of value of the assets, being a certificate furnished in respect of a valuation made not more than 12 months before the date of the application by a prescribed person or a person having a prescribed qualification;
 - (d) particulars of acquisitions of shares in the society made during the 3 years immediately preceding the date of the application by or on behalf of each of its directors and his spouse and the father, mother, children, brothers and sisters of each such director and spouse;
 - (e) a certificate signed by 2 directors of the society stating that to the best of their knowledge and belief the issue of bonus shares would not be imprudent and that no circumstances are known to them as to why the issue should not take place; and
 - (f) a statement by the society's auditor as to whether or not the issue of the bonus shares would, in his opinion, be prudent and reasonable.
- (3) A society shall furnish to the Advisory Council such further information with respect to an application made by it under subsection (1) as the Advisory Council may require.
- (4) The Advisory Council shall consider each application made to it under subsection (1) and may consent (subject to such conditions, if any, as it may impose), or refuse to consent, to the issue of bonus shares in respect of which the application was made.
- (5) Where the Advisory Council consents to an issue of bonus shares by a society under this section, the society may, in accordance with the consent pass a special resolution authorising the issue of bonus shares to its members.
- (6) The bonus shares -
- (a) shall be issued as fully paid up shares with no payment required to be made by a member of the society to whom they are issued; and
 - (b) shall be issued only in respect of shares that -

- (i) are fully paid up as at the date of issue of the bonus shares;
 - (ii) were issued at least 3 years prior to that date; and
 - (iii) have not been transferred within that 3 year period.
- (7) The total nominal value of bonus shares issued by a society during any period of 12 months shall not exceed 10 percent, or, where some other percentage is prescribed, the prescribed percentage, of the nominal value of the issued share capital of the society immediately before the date of the issue of bonus shares.

REASON:

To enable societies and their members to meet the effects of the current and anticipated continuing inflationary conditions by realistically valuing assets and spreading any accrued corporate benefits in an equitable manner amongst the owner members. A precedent for this has been established in New South Wales (vide section 47AA N.S.W. Co-operation Act 1923).

12. SECTION 60(2)

REQUEST:

Amend to read

"The reserve fund shall not be distributed amongst the members of the Society except in the event of winding up or with the authority of the Registrar.

REASON:

Whilst generally distribution should only be made from surplus realised there could be some instances where a Cooperative with a strong reserve situation has an unfavourable year and the Board wish to declare a dividend. Provided the Registrar satisfies himself that the proposal is prudent the authority could be given in the best interest of the Cooperative and its members.

13. SECTION 60(8)

REQUEST:

Amend to read

"In this section "surplus" means the excess of income over expenditure after making proper allowance for provision for taxation liability, for depreciation in value of the property of the Society and for contingent liability for loss.

REASON:

Taxation is now considered an expense item but does not appear in the income and expenditure statement.

14. SECTION 65(1) Untraceable Members

REQUEST:

Amend period from "not less than one year" to "not less than two years".

REASON:

One year is considered too short a time for a person to be classified untraceable.

15. SECTION 65(1) AND (2)

REQUEST:

Amend 65(1) last two lines to read

"from the date of the publication of the advertisement to transfer the shares held by the member in the Society to the dormant members non interest bearing share register."

Amend 62(2) last two lines to read

...."the society may transfer the shares held by the members in the Society to the dormant members non interest bearing share register."

REASON:

Subsequent claims by members whose account has been classified dormant will be more easily finalised if the account is still within the Cooperative rather than in an unclaimed monies account in the Treasury.

These funds can also be retained within the Cooperative as part of its equity capital rather than being drained from the capital structure and affecting the cash flow position.

16. SECTION 75(1)(b)

REQUEST:

Amend to read

(b) Upon deposit with any prescribed bank or, with approval of the Registrar, with any permanent building society incorporated under the Building Societies Act 1976 or in any society authorised to receive deposits.

REASON:

This protection of investments by Societies unfamiliar with the stability of all Building Societies is considered desirable.

17. SECTION 75(6)

REQUEST:

Amend to read

"....a society may invest any of its funds in secured loans, the purchase of shares or debentures in any company registered under the Companies Act 1961...."

REASON:

The investment in shares only is considered too restrictive. It might be considered necessary to amend 75(7) and 75(8) in line with request re Section 75(6).

18. SECTION 75(8)

REQUEST:

Amend to read

"....unless the purchase is authorised by the Registrar."

REASON:

A special resolution would not necessarily ensure the soundness of the investment. Reference to the Registrar would provide more overall protection.

19. SECTION 76

Item (7) Section 56(1) is relevant.

20. SECTIONS 85 - 96

REQUEST:

That the whole of Part III, Division 4 be removed from the draft.

REASON:

The exemption at Section 85(2) is inadequate to meet the situation. Shares or debentures which are not offered to the public must be restricted to offer to existing members. If a person applies for shares etc. then this should be an exemption. If challenged, such an applicant could always state he could not have made application unless he was aware the shares were on offer.

The whole concept of such a Division is contrary to the spirit, establishment and operation of Cooperatives and would merely increase the revenue and workload of corporate lawyers and accountants.

Whether the Cooperative be large or small it is right that the funds of members and potential members should be protected.

Whilst the issue of a prospectus might indicate to the public that someone concerned with the enterprise had done some homework and spent funds which might have been better employed elsewhere than in production of a prospectus it would not act as any better security for those funds once received than if no prospectus had been issued at great cost.

Cooperatives are groups of people uniting to meet a common need. This is their greatest protection. Their greatest weakness is that associated with all types of business - sound direction and management. A prospectus will not change that. Education will. Adequate Registry inspectorate will assist in this control.

Attention is drawn to Section 374 (14) of the Companies Act 1961 which excludes Cooperative companies from the provisions relating to "going from place to place offering shares for subscription or purchase to the public....

21. SECTION 103(1)

REQUEST:

Amend to read

"The number of directors of a society shall be not less than three."

REASON:

To bring into line with Companies Act, Section 174(1) and Building Societies Act s.26(1)(2).

22. SECTION 104 1(c)

REQUEST:

Addition of the words "or a nominee of the Cooperative Advisory Council" to the existing clause.

REASON:

The constitution of the Cooperative Federation of Victoria provides for one member of its Council to be a nominee of the Cooperative Advisory Council.

23. SECTION 104(2)

REQUEST:

Deletion of this section.

REASON:

Section 103(9) and (12) provide one secretarial or administrative employee to be elected director and this provision for managing director is welcomed.

However, with the progress of the concept of industrial democracy and worker participation in ownership, provision is required for employee members with equity in their cooperative to become directors.

Their remuneration as employees would remain a management responsibility but remuneration by way of directors' fees would still remain a matter for approval by members in general meeting (Section 107(2)).

24. SECTION 107(3)

REQUEST:

Clarification on "limit prescribed by regulation in respect of the appropriate kind of society..."

REASON:

Copies of the existing Regulations in this office make no reference to such provision. Is this to be the subject of a new Regulation? To enable considered comment to be made sighting of the proposed Regulation would be necessary.

25. SECTION 110(2)

REQUEST:

Amendment to either

"annual general meeting of a society shall be held within four months after the close of the financial year...."

or, as per Companies Act 1961 Section 136(1)

"annual general meeting of a society shall be held at least once in every calendar year and not more than fifteen months after the holding of the last preceding annual general meeting...."

REASON:

Cooperatives of a complex nature with fairly large turnover cannot commence finalising annual accounts until after receipt of creditors invoices, charges etc. are received. This could be 4 to 6 weeks. To balance the books, complete the audit, hold directors' meetings and give due notice of an annual general meeting is too much for many Cooperatives to accomplish in the remaining 6 weeks of the three month limit.

Registry records will no doubt substantiate this from the number of requests received for extension of time. A law that is impossible to comply with is a nuisance and a bad law.

26. SECTION 137 - 144 DIVISION 3 PART VI

REQUEST:

Provision be made for exemption from this Division by the Registrar to allow for modified audits, e.g. along lines of exemptions at Section 133.

REASON:

Whilst the need for stricter audit supervision is recognised, to comply with all the sections of Division 3, Part VI could impose a severe financial burden on many small community and similar Cooperatives.

27. SECTION 147(2)

REQUEST:

Amend to read

"A society shall within four months after the close of the financial year...."

REASON:

Refer item 25 above - Section 110(2)

28. PART XIV DIVISION 2 SECTIONS 229, 230, 231, 234, 235, 236, 241,
242, 243, 244, 245, 246, 247, 248

REQUEST:

Amend to read

"Penalty - not more than...."

REASON:

Currently the high penalties set are mandatory with no provision for tolerance by a Court.

THE COOPERATIVE FEDERATION OF VICTORIA

COMMENTS TO REGISTRAR, COOPERATIVE SOCIETIES

ON 1ST DRAFT OF PROPOSED

NEW CO-OPERATION ACT

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|-----|-----------------------|--|--|
| 1. | s 6 | Societies Generally | Definition of Cooperative Society to be included. |
| 2. | s 9 1(a) | Trading Societies | Do these objects permit of real estate business being conducted if rules so provide. |
| 3. | s 11 | Community Settlement Societies | Why have these been restricted to Rural areas. |
| 4. | s 47 | Objects of the Association | Should read <u>AN</u> Association. |
| 5. | s 49(1) | Formation of a Federation | Expand to include membership of Foreign Society or foreign association. |
| 6. | s 49(6) | Objects and Powers | Will these permit of conducting central banking operations.
(sec. 75(4)) |
| 7. | s 53(1) | Minimum membership | Request minimum membership of Producers Society to be 3. |
| 8. | s 53(1) | Typing error, line 2
penultimate word | Should read PERSONS |
| 9. | s 54(6) | Use of word "cooperative" | Why no penalty for unauthorised use of word "cooperative" when penalty imposed s 54(s) for improper use of words "credit society". |
| 10. | s 55(3) | last word | should read REGISTRATION. |
| 11. | s 56(1) (a) (b) (bii) | | Delete the word "credit" where appearing. |

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| 12. | s 58(1) | 3rd line "any and" | should read "AND ANY" |
| 13. | s 59(5) | alloted | should read "ALLOTTED" |
| 14. | s 59(12) | Joint Shareholders | Delete the word "credit" where appearing - applicable to all Societies. |
| 15. | s 59 | Issue of Bonus Shares from re-valuation of assets. | Require provision on lines of N.S.W. Co-operation Act s 47 AA. |
| 16. | s 60(5) | Maximum Rate of Dividend | Amend from
..."Commonwealth Bank on fixed deposits for two years" to
..."Bond rate of the Commonwealth Government of Australia". |
| 17. | s 65(1) | Untraceable members | Amend from ..."not less than one year" to ..."not less than two years". |
| 18. | s 65(2) | Transfer of untraceable members' shares | Require such shares to be forfeited to society or made subject to Regulation as per W.A. Credit Union Act 1979 s 53. |
| 19. | s 69(3) | Contracts for management of Society | Does this restrict appointment contract for management with outside person before he becomes an employee. |
| 20. | s 75(1)
(a) | Investment Trust funds | Why is "loan secured by mortgage over land" included. |
| 21. | s 75(1)
(6) | Investment Permanent Building Societies | Recommend should be with approval of Registrar. |
| 22. | s 75(4) | Investment in other Societies | Exemption should read
"...federation or association of credit societies". |
| 23. | s 78(10) | Transfer of engagements. Direction by Registrar. | Why are credit societies only given right to submit representation to Advisory Council against direction. |

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| 24. | s 85(2) | Exemption from issue of prospectus where shares not offered to the public. | How is "public" defined?
Will this enable applicant enquiries to be issued with shares to become a member. |
| 25. | s 102 | Age limit for Directors if credit society | Request deletion of word "credit".
Should apply to all societies. |
| 26. | s 103 | Number of Directors | Request deletion of reference to maximum number.
Reference: Companies Act s 174(1)
Building Societies Act s 26(1)(2) |
| 27. | s 104(1)
(c) | Qualification of Director | In the case of a federation should include membership of Cooperative Advisory Council. |
| 28. | s 110(1) | Annual General Meeting | Request A.G.M's after the first one be held within four months after close of financial year. |
| 29. | s 110(3) | 14 members to requisition special General meeting. | Request amendment to read "such number of members as is specified in the Rules. |
| 30. | s 127 | MISSING | |
| 31. | s 134(2) | 1st line P106 4th word.
Typing error | Correct to read "GIVING" |
| 32. | s 137(1)
(e) | Typing error | Correct to read "SOCIETY" |
| 33. | s 138(5) | Typing error 6th word | Correct to read "VACANCY" |
| 34. | s 150(4)
(6) | | Subsection (5) MISSING
Renumber (6) |
| 35. | s 190 | 2nd line. Typing error | Correct to read "PAID" |
| 36. | s 216 | Advisory Council | Request increase to 7 members,
3 of whom shall be from nominees of the Cooperative Federation of Victoria. |

37. s 225(e) Proposed advertisement for sale of shares Reference to prospectus needed?
38. s 227(1) Line 2 - Offences by Officers Delete "Company" substitute "Society".
39. s 238 Too few members Minimum number of 50 for credit societies should be included.
40. Does the new Act provide for adequate exemption from the more stringent requirements for simple Cooperatives such as some
Community Advancement Cooperatives
in addition to exemption from audit requirements.
Provided at s 133(3).
41. Provision is required for the special circumstances of
WORK Cooperatives and the increasing trend towards Industrial Democracy
- i.e. worker owners.
Provision should include ability for employees to be directors with any remuneration from performance of directors responsibilities being the subject of decision by members in general meeting. The question of salary or wages for employment is a matter for management.